

1
2 The UNITED STATES
3 NUCLEAR REGULATORY COMMISSION and
4 the UNITED STATES
5 DEPARTMENT OF ENERGY
6
7 PUBLIC MEETING
8
9 DISCUSSION OF THE IMPLEMENTATION OF SECTION 3116 OF
10 THE NATIONAL DEFENSE AUTHORIZATION ACT
11

12 Commencing at 9:10 a.m., November 16, 2006

13 at the L'Enfant Plaza Hotel

14 480 L'Enfant Plaza, SW

15 Washington DC 20024
16

17 Public meeting organized by:

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PROCEEDINGS

MR. CAMERON: Good morning everyone.

My name is Chip Cameron. I'm an assistant general counsel in the office of General Counsel at the Nuclear Regulatory Commission. And I would like to welcome you to a meeting between representatives of the United States Nuclear Regulatory Commission and representatives of the United States Department of Energy.

The topic of the discussion between the two agency staffs is going to be the implementation of Section 3116 of the National Defense Authorization Act, which deals with waste incidental to reprocessing that we all know by the acronym WIR.

I'll be chairing the meeting this morning, and I just want to briefly go through the agenda for you, a few simple ground rules, and also introduce the staff of the agencies who will be having the discussion this morning.

We're going to be starting out with a brief background piece.

I want to emphasize that this is a discussion between the staffs of the two agencies on implementation of Section 3116, and we're doing this today in an open meeting format. We will go out to the public, and we do have some people on the phone that will be joining us. We will be going out to you at the end of the meeting for comments, questions, but it is a discussion, first and foremost, between the staffs of the agencies.

And -- do you need anything?

If you could just turn off your Blackberries and cell phones, that would be helpful. Thank you.

1 We do want -- even though it's a discussion between the two agencies, we
2 are going to give you a short background piece at the beginning that gives you some
3 context on 3116 and what has happened to date between the two agencies.

4 And after that, we're going to go into a number of topics, how to make the
5 consultation process between the Department of Energy and NRC efficient and
6 effective. We're going to be talking about some lessons learned from past interactions.
7 And then what is going to be the path forward to implement the consultation provisions
8 after this meeting. And then we will go out to you for public comment.

9 And I guess I would ask that the people on the phones, if you could just
10 make sure that your phone is on mute so that we don't hear you here until we get to the
11 public comment part of the meeting. And we won't forget that you're out there. We will
12 get to you.

13 And with that, just let me introduce the folks at the table.

14 And I'm going to start with Larry Camper, who is on the end. And Larry is
15 the Division Director for Waste Management and Environmental Protection at the
16 Nuclear Regulatory Commission.

17 And next to Larry is Frank Marcinowski, and he is a Deputy Assistant
18 Secretary of Energy for Regulatory Compliance in the Office of Environmental
19 Management.

20 Next to Frank is Neil Jensen, who is a senior attorney with the Nuclear
21 Regulatory Commission.

22 And next to Neil is Ben McRae. And Ben is Assistant General Counsel for
23 Civilian Nuclear Programs at the Department of Energy.

1 We then go to Scott Flanders, and Scott is the Deputy Division Director for
2 the Environmental Protection and Performance Assessment Director at the Nuclear
3 Regulatory Commission.

4 And last, but not least, is Karen Guevara, who is the Director of the Office
5 of Compliance, Department of Energy.

6 And I think it will be clear -- do we have -- yeah, we have everybody's
7 affiliation on the front. And with that, let me go to Larry Camper for some background
8 on the Act.

9 MR. CAMPER: Okay. We can go to the next slide.

10 I recognize that many of you are quite familiar with this particular piece of
11 legislation and the process that's going on to carry out that legislation. But
12 nevertheless, we felt that it might be worthwhile just to revisit some of the background
13 because some folks might not be quite as familiar as others. So bear with us while we
14 do that.

15 By way of background, Congress enacted Section 3116 as part of the
16 Ronald Reagan National Defense Authorization Act of Fiscal Year 2005.

17 We may sometimes refer to this Act as NDAA during this meeting. In
18 NDAA, Section 3116, Congress clarified the Secretary of Energy's authority, upon
19 consultation with the Nuclear Regulatory Commission, to classify certain waste from
20 reprocessing at two DOE sites, the Savannah River site in South Carolina and the Idaho
21 National Laboratory in Idaho, as other than high level waste requiring disposal in a deep
22 geologic repository.

1 The purpose of this meeting is to discuss agency implementation of
2 Section 3116 thusfar, what has gone right, what has gone not quite so well, and where
3 do we go from here.

4 While some press coverage of the Section 3116 implementation has
5 indicated that there is a huge rift between the agencies, we do not believe this to be the
6 case. In fact, the agencies have successfully completed consultation on two Section
7 3116 waste determinations thusfar, one for each of the sites covered by Section 3116.
8 There are, however, some implementation issues which we will discuss today.

9 Because much of the discussion today will be about each agency's views
10 of Section 3116 roles and responsibilities, let me spend just a few minutes providing an
11 overview of Section 3116.

12 Under Section 3116 (a) of the NDAA, the DOE must consult with the NRC
13 on the Secretary's determinations that certain wastes are not high-level radioactive
14 waste in accordance with criteria specified in the Act.

15 Next slide.

16 Among these criteria are that waste will be disposed of in compliance with
17 performance objectives for shallow land burial or near-surface burial disposal as set out
18 in Subpart C of Title 10 Code of Federal Regulations, Part 61, entitled Licensing
19 Requirements for Land Disposal of Radioactive Waste.

20 Under Section 3116(b) of the NDAA, the NRC must monitor DOE's
21 disposal actions to assess compliance with the Part 61 performance objectives.

22 As part of its monitoring responsibilities, NRC must notify DOE, the
23 applicable state, whether it be South Carolina or Idaho, and certain Congressional

committees if the Commission considers any disposal action taken by DOE to be not in compliance with the Part 61 performance objectives.

Next slide.

Consultation process.

The first two Section 3116 waste determinations have involved DOE issuing a draft waste determination to the NRC for consultation at the same time it is issuing the draft for public comment.

The NRC then reviews the draft and issues formal requests for additional information, RAIs, to DOE for its response.

DOE then responds to these requests, after which the NRC issues its technical evaluation report formally conveying our technical conclusion as to whether DOE's proposed waste disposal action would meet the criteria in 3116. And, concluding our consultation process on that, give a determination.

This process has taken on the order of ten to 12 months for each of the first two determinations that we have conducted.

At this time, although the agencies have completed consultations on two waste determinations, DOE has not initiated disposal activities yet based upon either one of these determinations. And, thus, the NRC has not yet commenced its monitoring responsibility under the Act.

So I think that's a good background, at least a brief, quick overview of the Act, and generally each of our responsibilities.

So why are we having this public meeting?

1 What issues have we encountered as we have implemented 3116? And,
2 most importantly, what is the path forward?

3 In May of 2006, the NRC issued our draft Standard Review Plan, or SRP,
4 for public comment.

5 The Standard Review Plan lays out in substantial detail the process that
6 we have been following in the two determinations thusfar and the process that we would
7 follow in the future.

8 The determination, the waste determination for the Savannah River site,
9 are scheduled to go out as far as 2020 into the future. And we felt it was important to
10 memorialize our review process so that there would be consistency amongst the
11 reviewers who will be reviewing these determinations for many years to come into the
12 future.

13 That SRP, as I said, was published in May of 2006. The Department of
14 Energy looked at the SRP and felt that it was time to raise some implementation
15 concerns that it had.

16 These issues that they raised were not especially new to us. In fact, they
17 had been discussed at different times during the interactions that we have had. But,
18 nonetheless, the Standard Review Plan became a vehicle for which the Department of
19 Energy felt that it wanted to raise its concerns a bit more formally to our agency.

20 So with that, they did.

21 And I think at this point, I would ask Frank to give a quick overview of the
22 DOE concerns and position.

1 MR. MARCINOWSKI: Good morning. Actually, before I get into our
2 concerns and areas where we think efficiencies can be gained in the process, I first
3 want to say we have had two successful consultations with the NRC.

4 The first was on the Saltstone facilities down at Savannah River. And the
5 second one we received in late October on the tank farms out in Idaho.

6 So the process is working. And I think the issue is, and what we're going
7 to be discussing today, is how can we make that process more efficient.

8 And as far as the Standard Review Plan, we did raise some concerns
9 about that. We understand the concept of the Standard Review Plan and that NRC
10 uses it in its regulatory activities, but this is not a licensing action. It's a consultation
11 with NRC.

12 And the SRP focused solely on NRC's body of knowledge with respect to
13 rad waste disposal. And it seemingly conveyed that DOE had to employ NRC's
14 methodologies in issuing waste determinations.

15 Now, given that Section 3116 authorizes the Secretary of Energy to make
16 the waste determinations and does not dictate which methodologies to use, it seemed
17 to DOE that this was a misreading of the Section 3116 intent.

18 Now, DOE read the SRP to indicate that we were approaching close to a
19 regulatory environment, which is not what we believe the intent of 3116 was, and that's
20 why we raised the issues regarding the SRP.

21 And we believe it can be a useful tool.

22 But we both believe that there are some changes that can make it a little
23 less regulatory in nature and structure.

1 The other concern that we have and I think that we can make some
2 improvements on is the timeliness of the reviews. The consultation process, thusfar for
3 the first waste determinations, we think that the -- it could have been done in a shorter
4 period of time.

5 The first waste determination took about 12 months. The second took --
6 for waste technical review, took about 12 months. The second took about 14 months.

7 And that -- there are technical policy and methodology questions that were
8 raised in that process during the request for additional information period of the
9 consultation that we think could have been resolved earlier in the process.

10 And the fact that this was sort of a back-loaded process, that it focused on
11 resolving the Agency's methodology questions after we had already completed our
12 analyses, calculations, our modeling, and that required a significant DOE rework on all
13 those -- all those analyses that we had already conducted in order to address the NRC
14 request for information.

15 And as a result, I said -- we already said that I think it took longer than it
16 could have -- it needed to take.

17 And so we believe that there are efficiencies in having up-front meetings
18 prior to the submission of a draft waste determination to resolve policy approaches and
19 technical methodologies.

20 Another area that it's just something to be recognized is that I believe
21 there are cultural differences between the two agencies.

22 Section 3116 is focused on protecting human health and the environment.
23 This is the focus of the performance objectives for shallow land disposal. And each

1 agency has its own methodologies for how to do the analyses, calculations, modeling
2 associated with radioactive waste disposal.

3 For NRC, this is done through their 10 CFR 61 regulations. And for DOE,
4 it's done through our DOE Order 435.1 on radioactive waste management.

5 Now, neither agency's technical basis is wrong, and neither agency's
6 methodology is wrong. It's just they are different from one another. And those
7 differences, if they're left unresolved, will continue to interfere with the efficient
8 implementation of Section 3116.

9 Improved efficiencies, which is why I think we're here today to discuss this.

10 And let me just clarify one point. When this issue was -- came out in the
11 end of July, there was a significant amount of press activity on it, and DOE has been
12 portrayed as being opposed to public meetings.

13 This is simply not true.

14 In fact, we believe public involvement is an important part of the process.
15 And we strongly support and will continue to promote such interactions.

16 We also believe that there are value in having agency-to-agency
17 discussions to understand the differences in agency technical methodologies and agree
18 upon approaches to Section 3116. And I believe that this is also key to the efficient
19 implementation of 3116.

20 I also want to say that, while DOE makes the determination and NRC
21 provides consultation, another important player in the waste determination are the
22 states in which these tanks are located.

1 I first want to thank the states for the involvement they have had so far,
2 and they play an important role in issuing the necessary permits and approvals in order
3 for tank closures to proceed.

4 Given that role, and, as another government agency, I believe it is
5 important for them to also be involved in these up-front discussions that I mentioned
6 earlier.

7 I think the agencies recognize that we are having implementation issues
8 for some time. We held a public meeting this past April, and there we had identified a
9 number of lessons learned.

10 I don't think we have acted on those, but I think the timing is right now for
11 us to, you know, examine what those -- the outcome of those lessons learned were and
12 to decide where it is we can best make improvements in the process.

13 And that's, I think, where we're going to head next is that we're going to
14 hear a little bit about those lessons learned and about some of the differences in the --
15 the cultural differences between the agencies.

16 And Chip -- Larry, were you going to talk about those?

17 MR. CAMPER: I am.

18 MR. CAMERON: Okay. Thank you, Frank. Larry, are you all --

19 MR. CAMPER: Yeah, just a quick sort of clarifying question, Frank.

20 MR. MARCINOWSKI: Sure.

21 MR. CAMPER: I heard several things. I heard the role of the standard
22 review plan being more like a regulatory process as if the DOE were, in fact, a licensee.
23 That was troubling to you.

1 MR. MARCINOWSKI: Uh-huh.

2 MR. CAMPER: The timeliness of the review is something you feel like we
3 need to make some improvements upon. It was, as you characterized it, sort of a
4 backdoor process, i.e., it came late in the process after you had done much of the work
5 already.

6 MR. MARCINOWSKI: Right.

7 MR. CAMPER: We're using different technical methodologies to evaluate
8 the issues at hand, and then some. And then, of course, there's some cultural
9 differences, which there certainly are.

10 In addition to that, as we move toward our discussion on the path forward
11 a little bit later in the agenda, you raised a couple of issues with regards to front-end
12 meetings, earlier meetings, and so forth, and we will talk more about that when we get
13 into that part of the meeting.

14 We certainly share your sentiment on that point, and so we will talk a little
15 bit more about that in detail.

16 The other point that I would mention, from our standpoint, is that, as Frank
17 pointed out in his comments, the Secretary in this particular legislation has the charge of
18 making a determination on this waste incidental to reprocessing in consultation with the
19 NRC.

20 The other thing in the legislation, though, that is equally important from our
21 standpoint is the monitoring role that we have. We have a charge to monitor to ensure
22 that the performance objectives of Part 61 are being met.

1 And of course, if we determine that they're not, as I pointed out in earlier
2 comments, we have a role to play with regards to interacting with states and certain
3 oversight committees.

4 So I think that these sets of responsibilities that we have that have been
5 brought together in this particular piece of legislation does bring together two different
6 agencies who are accustomed to functioning in two, frankly, totally different ways.

7 And I think your point about trying to figure out what is the right
8 methodology to use is a point well made, and we will try to work toward that more as we
9 get to the path forward.

10 The first slide of lessons learned, Scott.

11 Do you have that?

12 Yeah. I think that picking up on what Frank said, I think something that
13 has been a bit lost in all of this is the fact that there have been, frankly, two successful
14 determinations that have been completed at this point in time, one for the Saltstone
15 determination at the Savannah River Site, and the other for the tank farm in Idaho.

16 A great deal of work went into both of those determinations from each of
17 the agencies. We had a lot of meetings along the way, some open, some closed, but a
18 lot of meetings along the way. And a great deal of information exchanged hands.

19 And so after the first determination was completed, the Saltstone
20 determination, which was -- we issued our TER in December of '05, we had a meeting
21 in April, this year. The meeting took place between us, DOE, DHEC, which is the South
22 Carolina public health agency, the South Carolina Governor's Nuclear Advisory Council,
23 and this took place in South Carolina on the 10th of April.

1 It was a meeting open to the public. And during that meeting, which went
2 on for probably three hours or so, we had a very interesting exchange of information,
3 and there was a lot of things that we put on the table.

4 And we discussed the lessons learned from the consultation for the
5 Saltstone and frankly had, I think, a very frank and meaningful exchange.

6 And one of the -- and a couple of things that came out of that meeting
7 was, as Frank pointed out, first, there's this need for agency-to-agency meetings. There
8 is a need for earlier interactions. And there is a need for resolution of generic technical
9 issues.

10 I mean, one of the things that we both found interesting is that here are
11 two agencies, each of which are accustomed to carrying out their respective roles and
12 responsibilities, but they have been brought together under this particular piece of
13 legislation. And they are to consult together. They are to consult on these
14 determinations.

15 And you have one agency that's in the business of remediating tanks,
16 cleaning up this Cold War legacy waste, getting the job done, if you will. And you have
17 another agency that's accustomed to being an independent federal regulator with a
18 strong oversight role.

19 And these two are to work together in a consultation arena to make this
20 process work successfully.

21 And to do that, this notion of earlier interactions is something we both felt
22 very strongly about.

1 We think it's terribly important for the two staffs to work together prior to a
2 determination being on the table, when we're talking conceptually about how DOE
3 intends to proceed with a determination on a particular tank at the Savannah River site
4 at this point, given that Idaho has been completed except for monitoring.

5 So earlier interactions, when there is not a determination on the table and
6 you can talk conceptually, and scientists can exchange information, can exchange
7 views before a determination process is identified, we felt was terribly important.

8 There are a number of generic technical issues -- next slide -- that we felt
9 warrant discussion.

10 These generic technical issues that you see on this slide, touch most, if
11 not all, of the waste determinations that will be performed by the Department of Energy
12 and reviewed by the NRC under the consultation framework.

13 Point of compliance obviously touches every determination. Grouping of
14 tanks for the submittal. Submission of waste determination prior to waste removal.
15 Cumulative impacts. Concentration averaging. Basis criteria for terminating waste
16 removal activities. Support of models. Sensitivity and uncertainty analyses. Estimating
17 waste inventory and waste tank characterization. Long-term grout performance. Long-
18 term engineered cap performance.

19 Now, we identified the generic technical issues during the April meeting.
20 We ranked them in priority order, and you see the priority order depicted here.

21 We also estimated the amount of time that it would take to adequately
22 address and resolve these various generic issues.

1 We had one meeting, a short meeting on this, and we are eager to get
2 back to discussions about the generic technical issues.

3 We think that if we can work our way through these generic technical
4 issues, it will go a long way to improve the interactions between the staffs as a
5 determination is being prepared. We think it can go a long way to reduce the number of
6 additional questions that the NRC would need to ask of DOE, if not being able to reduce
7 all of them.

8 And so addressing these generic technical issues is something we want to
9 get back to in short order, and we would plan to do that. We wanted to have this
10 meeting and discuss our path forward.

11 But clearly in the path forward, this is a very important thing that we need
12 to get back to.

13 So that's what I wanted to say about the lessons learned. And when we
14 talk in the path forward, I think, Karen, at that point, you're going to raise some technical
15 points that grow from these technical issues that you see here, the generic technical
16 issues.

17 And Karen, when we talk about the path forward, will bring to bear this
18 difference in technical approach. But it's really about how do we solve these issues and
19 bring together these two different methodologies.

20 So, Chip, that's what I wanted to say about the lessons learned.

21 MR. CAMERON: Okay. Neil, do you want to add anything?

1 MR. JENSEN: I would just like to make a clarification with regard to
2 NRC's monitoring role, which Larry talked about briefly, that our monitoring role is to
3 assess DOE's compliance with the performance objectives, not to ensure DOE's --

4 MR. CAMPER: Did I say ensure?

5 MR. JENSEN: I think that's what I heard.

6 MR. CAMPER: I meant assess. You're right. You're absolutely right.
7 Thank you, Neil.

8 MR. JENSEN: So the bottom line being that we don't have any
9 enforcement authority as an aspect of our monitoring role. We have this duty to assess
10 DOE's compliance.

11 MR. CAMPER: Thank you very much.

12 MR. CAMERON: Thanks, Neil.

13 And, Karen, are we going to go with you at this point?

14 MS. GUEVARA: I wanted to go on and pick up off of what Larry had been
15 mentioning. The concept of generic technical issues that need to be resolved between
16 the two agencies I think was perceived as troubling to some in that the concept of
17 generic issues maybe wasn't specific enough.

18 For those of you on the phone, we have a graphic up here that depicts
19 graphically a lot of what Frank and Larry have already spoken to, that part of the
20 implementation difficulties we have is simply that each agency, in complying with its
21 Atomic Energy Act responsibilities, developed its own regime, its own set of
22 methodologies and technical approaches.

1 As Frank indicated, neither of those agency approaches is wrong. And,
2 yet, the list of lessons learned items draw directly out of the differences between each of
3 those approaches.

4 Point of compliance becomes an issue simply because the underlying
5 regulations that each agency uses for approaching that very question has different
6 technical bases and assumptions.

7 And so the concept of trying to have the agency discussions to resolve
8 what those differences in approaches are becomes critical.

9 I think this also, again, clarifies that part of the scenario we find ourselves
10 in is that 3116, while clearly giving consultation role or decision role, rather, to the
11 Department, consultation role shared between the two, and a monitoring role to the
12 Commission, did not address at all the concept -- did not recognize that each of these
13 agencies was approaching things from a methodology and approach perspective so
14 fundamentally differently.

15 And so I think that what we are going through was really probably very
16 logical growing pains. But I do think that each of the agencies now realize that having a
17 lot of agency-to-agency discussions to resolve approaches and preclude a lot of the
18 rework during the request for additional information phase of consultation is key to
19 reducing the time for each subsequent waste determination and improving the
20 efficiency.

21 MR. CAMERON: All right. Any questions or comments, discussion on
22 what Karen just said, or are we going to go to you, Scott?

1 MR. FLANDERS: I was just going to pick up on a couple of points that
2 Karen made.

3 I think it was a good graphic, and I think it does do a good job of depicting
4 some of the challenges that we face in terms of implementing 3116.

5 And I think it's appropriate to look at each of these issues and see how
6 we develop what is the appropriate regime for 3116, recognize that DOE Order 435.1
7 and 10 CFR Part 61, were designed for a shallow land burial disposal. That's what the
8 concept was in terms of when they developed those guidance and regulations.

9 But I think it's -- we're dealing with somewhat -- while -- a somewhat
10 slightly different problem. And I think it's appropriate to look at it and see what fits and
11 what's the best methodology from a technical standpoint for the problem at hand.

12 So I think a lot of progress can be made. And I think it's important that we
13 do that and get on with getting into some of the technical issues to try to really define
14 that process.

15 I think it will increase the efficiency a great deal in the review process.

16 MR. CAMERON: Anybody else?

17 Okay. Who are we going to go to next?

18 MR. CAMPER: Well, I think we should probably begin to talk a little bit
19 about the path forward.

20 MR. CAMERON: All right.

21 MR. CAMPER: Clearly, you know, I'm hearing a couple of things.

1 Obviously, I'm hearing some process issues, and I'm hearing some
2 technical methodology issues. I think, Karen, your slide and your comments did a great
3 job of putting that right at the forefront.

4 I mean, it's really good to see 435.1 on one slope and the performance
5 objectives of Part 61 on the other and the different approaches we use.

6 And I -- you know, if you think about the SRP for a moment, the
7 Standard Review Plan was designed to be guidance that our staff would follow in
8 conducting its reviews.

9 You know, one of the things that surfaced back after you published the
10 SRP in May was this question that were we prepared to withdraw the SRP. And we
11 made no decision to withdraw the SRP, but, rather, we're looking at the DOE comments
12 like we're looking at all the comments to see what changes, if any, need to be made to
13 the SRP.

14 And certainly, when you look at the differences in methodologies, one of
15 the questions that surfaces in my mind is, although we felt that the SRP, as it's
16 guidance, it's a way, it's the way our staff -- it's the methodology our staff is following,
17 that is not to say that there aren't things that could be done to that guidance.

18 It could more readily recognize the fact that these two methodologies are
19 in play and perhaps something could be done. We could consider taking steps to
20 modify or revise language that would make that point more clear, that there are different
21 methodologies.

22 So that's a thought that comes to mind with regard to the SRP in terms of
23 something that might be done to accommodate those two different pathways.

1 I think another point -- Scott, can you put up my slide, Slide 4 of the first
2 presentation?

3 MR. FLANDERS: Yes.

4 MR. CAMPER: I mean, it strikes me, when you look at as many issues as
5 we have talked about already, and whether they be process or they be technical
6 methodologies, it strikes me that we have a need for more meetings. We have a need
7 to get together in the future.

8 Frank pointed out, and I reiterated in my remarks, that we need to get
9 back to these generic technical issues as quickly as possible because they touch all
10 determinations. And I think the faster we can get back into dialogue about those
11 generic issues, the better we're going to be.

12 So my point is, I certainly see the need for more meetings. And I think,
13 frankly, that some of those meetings need to be agency-to-agency meetings, and some
14 of those meetings need to be meetings in which the public would be in attendance.

15 I put this slide back up because I want to draw your attention to the last
16 bullet where it says, Public meetings will be conducted in accordance with the
17 requirements in Management Directive 3.5.

18 Management Directive 3.5 provides pathways for both open and closed
19 meetings. And it goes on in some detail to describe the types of meetings which are
20 suitable for public attendance and the fact that there are certain types of meetings that
21 are suitable for, in this case, agency-to-agency meetings.

22 And so what I -- the point I would like to make is we do need to have more
23 meetings. I think we need to have as many of those meetings, and our agency prefers

1 to have as many of those meetings regarding the NDAA, to be as open as is
2 practicable.

3 But our agency also recognizes that certain meetings are better – are
4 more suitable for perhaps being an agency-to-agency meeting, or closed, if you will.

5 And what I think we would like to do is take a look at each of these
6 topical areas or process issues that we need to address and figure out on a case-by-
7 case basis which of those meetings would be most suitable for being agency-to-agency
8 meetings, or which ones are more suitable for being open to the public.

9 And so I think that the point I would make is that we do feel that there's a
10 need for more meetings. And that, following the guidelines in our Management
11 Directive 3.5, some of them need to be agency-to-agency, therefore closed, and some
12 of them need to be open publicly.

13 MR. CAMERON: Ben, do you want to add something?

14 MR. MCRAE: Yes.

15 MR. CAMERON: Ben McRae, Department of Energy.

16 MR. MCRAE: Thank you. I just want to pick up on something that Larry
17 said about the Standard Review Plan.

18 MR. CAMERON: Ben, can you pull that mike a little bit closer to you --

19 MR. MCRAE: Sure.

20 MR. CAMERON: -- and make sure everybody can hear you?

21 MR. MCRAE: I'm sorry. I sometimes speak too softly.

1 On the comments that the Department provided on the Standard Review
2 Plan, I think that to some extent, it is useful for this discussion to understand what
3 motivated those comments.

4 And the Department and the Commission have a long history of working
5 together on a number of projects, and it has taken a number of forms.

6 I mean, we have been a licensee in a number of situations, with the
7 ISFSI's at Idaho. We are pursuing -- well, we actually have construction authorization
8 for the MOX facility down at Savannah River. As we all know, we're preparing for a
9 fairly complex licensing proceeding with Yucca Mountain.

10 We have had the experience of certifying the gaseous diffusion plants
11 back in the '90s.

12 And, actually, with the high-level waste issue, we have been working with
13 the Commission on that issue since, oh, probably at least the mid 1980s.

14 And it was -- the WIR process actually developed from correspondence
15 between DOE and NRC. And there was a long history of consultation between NRC
16 and DOE on high-level waste and waste resulting from reprocessing.

17 When we look at 3116, we view that as an attempt to capture, not the
18 licensing or the certification interactions, but the interactions that the Commission and
19 the Department had had on waste from reprocessing over the years. And that it was an
20 attempt to codify that and to make clear what criteria the Secretary would have to
21 consider as in that process.

22 3116 actually, by operation of law, makes certain waste from reprocessing
23 -- it makes a, by operation of law, determination that that waste is not high-level waste if

1 the Secretary, in consultation with the Commission, determines that certain criteria are
2 met.

3 Our concern with the Standard Review Plan is that -- and I think it's
4 understandable. It's a document. It's the type of document that the Commission
5 normally uses in licensing, and that's what the Commission normally does.

6 And some of the terminology reflects what you would expect, that it's
7 guidance. But normally, when an agency puts out guidance, there's an expectation that
8 the burden is on the applicant perhaps to justify that if they follow an alternative method,
9 that that's equivalent.

10 3116(a) is clear that the Secretary is the decision maker.

11 So in looking at this Standard Review Plan -- and I don't think this is what
12 was intended by the Commission or the staff in drafting the document -- but some of the
13 terminology could be read to put the process -- to make the process sound as if the
14 Commission was the decision maker rather than the Secretary.

15 And that was our concern is to get the proper balance, that it's quite
16 understandable and useful for the staff to have a document that sets out the normal
17 practice of the Commission in looking at these criteria.

18 But in consultation, there actually is not a presumption that that -- that the
19 guidance that goes with that, that will go with that section has quite the same weight.

20 And it's more that what is -- what we're trying to do is to make sure that --
21 what we were hoping with that is to make sure that the Standard Review Plan did not
22 create a situation where we would not have a useful dialogue between NRC staff and
23 DOE staff, so that the DOE staff could understand the considerations that went into the

1 guidance that NRC had developed, and that the NRC staff could understand the factors
2 that had gone into the approach that DOE was following, if those two approaches were
3 different.

4 And that's what we were getting at.

5 And I think it's been overblown as to what was hopefully an attempt to try
6 to make sure that we got the -- fine tuned the process so that we actually had some
7 meaningful dialogue between the agency staffs, that it wasn't -- but to some extent, it is
8 a difficult issue because, though we have had a long history of working together, 3116 is
9 actually a very unique arrangement between the Commission and the Department, and
10 it's taking us some time to actually just work out the details.

11 MR. CAMERON: And, Larry -- let me go to Scott, and then we will go to
12 Larry.

13 And, Scott, you may need to make sure you're close to the mike.

14 MR. FLANDERS: Okay. Hopefully this is close enough.

15 MR. CAMERON: Yeah, I think.

16 MR. FLANDERS: All right. I just wanted to address a couple of the
17 comments that Ben made.

18 And I think it is important that we have a dialogue because certainly the
19 intent -- the Commission fully understands its role in 3116. It's a consultative role, and
20 then we have a monitoring role. We fully understand that.

21 And the SRP was written from that context. It was not written as a
22 regulatory type document. If it was written as a regulatory document, it certainly would

1 have been structured different. Although, the name SRP is the same, it certainly would
2 have been structured very differently.

3 The document also -- the real purpose of the document is recognizing that
4 in the past -- we have had some consultation in the past, but it has been fairly limited,
5 and we have had fewer people involved.

6 And as this process is going to continue for some time, there was a need
7 to have a way of having some consistency across reviewers and consistency from one
8 case to the next. And also from knowledge management to be a tool to also train staff
9 so they can understand what areas we look at so that we're consistent in our
10 application.

11 And the document was written in a way that it was not attempting to be
12 prescriptive, but really is a guide for the reviewers in terms of what they need to
13 examine, what they need to consider.

14 And it's recognized, clearly, that there are multiple ways to demonstrate
15 how you meet those performance objectives. It's written in 3116, and we recognize
16 that.

17 But we wanted to ensure that we had a consistent approach in terms of
18 reviewing the document.

19 So if there's language in there that you feel as though is more of a
20 regulatory type language, we would be interested in the dialogue around that.

21 But we really -- we wrote that document fully understanding what our role
22 was and with the goal of really trying to ensure that we had an efficient process because

1 this is a topic that's very important and needs to be addressed for the nation. And we
2 need to address it in a way that's protective of public health and safety.

3 So we want to get on with that and do that type of work. But we were
4 writing the document from the standpoint of how do we ensure that we are consistent in
5 our application.

6 So it would be interesting to dialogue further about -- oh, we probably don't
7 have enough time today to go into that topic, but we do need to talk about that a little bit
8 further.

9 MR. CAMERON: Thank you, Scott.

10 And thanks, Ben, for clarifying what the Department's concerns were with
11 the Standard Review Plan.

12 And we shouldn't forget also that we have received many, many useful
13 comments from the public, from government agencies and the public on the Standard
14 Review Plan that's going to be very helpful in terms of our review. And, Larry.

15 MR. CAMPER: Yeah. Two quick comments.

16 One first on the SRP, just picking up on what Scott said, and this -- the
17 SRP was a different sort of SRP for us as well.

18 I mean, customarily when you write a Standard Review Plan, you know,
19 you're developing a document that's designed to help the staff support a particular
20 implementation of a particular regulation in our space. And maybe the choice of the
21 term "Standard Review Plan" in and of itself brings that to mind.

1 But the point I want to make with regards to the SRP is it was written very
2 broadly because it does also address our responsibilities for assessing compliance
3 under the Act, and so it was a different type of document for us as well.

4 But, as I said a moment ago, you know, looking at the document, looking
5 at your concerns, your comments, along with the other comments, certainly there may
6 be opportunities to make adjustments in it so that the flexibility that was intended is as
7 clear as it can be.

8 But I want to go back to these meetings for a moment. I raised a specter
9 of the need for more meetings, and I pointed out that some of these meetings,
10 consistent with Management Directive 3.5 could be closed agency-to-agency meetings,
11 or that they could be open.

12 And the public, in this process, is something that none of us want to lose
13 sight of. And if we determine, on a case-by-case basis, if some of these discussions
14 should, in fact, could be better suited for closed agency-to-agency discussions where
15 you're discussing preliminary pre-decisional information well in advance of any
16 particular determination -- discussions about a particular determination clearly have to
17 be public meetings. We would not consider discussions about a particular
18 determination being closed anything other than public.

19 But if we were having discussions of a generic nature; we were discussing
20 processes, not particular determinations; if we were discussing information that is
21 preliminary in its nature and is pre-decisional, those types of things might be better
22 suited for agency-to-agency discussions.

1 However, throughout that process, even if that were to take place, there
2 needs to be a continuing effort on both agencies -- and we both recognize this, as
3 witnessed by Frank's comments earlier and some of my comments -- no one wants to
4 have all of these meetings in a closed fashion. Everyone recognizes the importance of
5 the need for public awareness of what goes on.

6 And throughout this process, as we have further meetings, we're going to
7 be focusing upon what can we do to disseminate information publicly.

8 I don't want to sit here today and say that it's only public meetings, or that
9 it's only summaries of those meetings, or that it might be some combination thereof. I
10 just don't know.

11 But I do know that along the way, public awareness of our discussions will
12 be a terribly important item on all of our minds. And we will find ways -- we commit to ,
13 to all of you here today -- we will find ways to disseminate information about our
14 discussions.

15 And particularly important is if discussions of a preliminary nature or of a
16 generic nature ultimately lead to particular methodologies that will be used, for example,
17 to address a point of compliance, as an example, across the board, then I think it's an
18 inherent responsibility incumbent upon both agencies to get that information out to the
19 public and explain how we came to a closure on what would be the appropriate
20 methodology to use, for point of compliance, or any one of the other ones that you saw
21 listed in the seven in that table that I showed a few minutes ago.

22 So I want to make sure that it's clear that we -- that all of us at this table
23 support and fully recognize, as does our respective leaderships of our agencies, the

1 importance of public awareness of this process in disseminating information along the
2 way.

3 MR. CAMERON: Karen.

4 MS. GUEVARA: I would like to just add briefly that I think it is incumbent
5 on both agencies, as we do discuss those various topics, we owe it to the public that, in
6 the end, we do come up with a documentation.

7 Again, the concept of the NRC Standard Review Plan and the fact that it
8 does so rely only on the NRC's body of knowledge and approaches.

9 And as we have discussions and resolve some of the approach and
10 methodology differences, I think that we have to document in some fashion what the
11 revised approach will be, what the approach to 3116 implementation will be, and
12 whether that takes the form of a revised Standard Review Plan or some other public
13 document between the two agencies that charts this out.

14 I mean, you mentioned, Scott, knowledge management. I think that it has
15 to serve both agencies in terms of providing a knowledge base that there are different
16 approaches out there and an acknowledgment that a variety of approaches can be used
17 to achieve those objectives.

18 MR. FLANDERS: I agree fully with your comments, Karen.

19 It's critical that the process is transparent. I think that's one of the things
20 that our agency really holds value -- high value on.

21 So, yeah, we need to document any type of changes and what the
22 process is going to be so it's transparent and people understand that. That's a very
23 good comment.

1 MR. CAMERON: Ben.

2 MR. MCRAE: Two points.

3 And one is, this discussion brings up one of the issues which we have
4 been grappling with over the last year or two in trying to make this 3116 process work.
5 And I'll use the point of compliance as an example.

6 That in a -- if I get this wrong, I'm sure somebody from NRC will correct
7 me. But in a normal NRC proceeding, my impression is that the NRC staff and the
8 applicant engage in discussions that eventually -- and, again, usually the staff would
9 start from the Standard Review Plan.

10 They would listen to what the applicant had to say. And eventually the
11 staff would take a position to the Commission, and the Commission would ultimately
12 make a decision.

13 3116(a) is somewhat different in that you have the discussion between the
14 DOE technical staff. You have the -- and the NRC technical staff, but the decision is
15 taken to the Secretary.

16 And, again, trying to figure out exactly how that kind of consultation and
17 terms that are used in an NRC licensing proceeding, how to make best use of all of that
18 and also take into account this structure that we're given in 3116(a), that is perhaps not
19 the easiest thing to do. And that's what -- but the 3116(a) is clear that the Secretary
20 is the ultimate decision maker.

21 On the public participation, I think it's important to note that 3116(a)
22 doesn't speak to that.

1 It was a decision by the Department that it would make the draft
2 determinations available to the public and provide for a review-and-comment period by
3 the public. That was a decision that the Department took on its own to involve the
4 public.

5 And not only on the 3116 process, but also I think that policy goes to
6 determinations that we might make under the DOE order because we do think it's
7 important to have the public involved. And we've made available now three draft
8 determinations, and we've made available all the -- I shouldn't say all. We've made
9 available many supporting documents.

10 All might be too broad, since I'm sure there are documents -- but we have
11 made a fair amount of information available to the public so that the process could be
12 transparent.

13 I think what we're grappling with is the concern that I have heard
14 expressed by both technical staffs, that it would be productive to have interactions early
15 in the process.

16 And normally those interactions, when you're doing a rulemaking or any
17 other proceeding, there are internal discussions that go on as you're developing
18 positions, analyzing various information, and those normally do not involve the public at
19 every meeting.

20 And it's how to be able to get the value of consultation under 3116(a) early
21 on, and also not -- and also fit that into this process where there are these preliminary
22 actions that are necessary to develop documents before you make them available to the

1 public, and also to be able to have the kind of candid exchange between technical
2 experts.

3 And, again, trying to work that out and make sure that we also have the
4 legitimate public input, which is so important, to make sure that we come up with results
5 that are both acceptable and correct.

6 That's -- that's not an easy task.

7 Thank you.

8 MR. CAMERON: Okay, thanks, Ben. Larry?

9 MR. CAMPER: Well, you know, Ben, I think -- picking up on your point, I
10 mean, I think that there needs to be a recognition by all of us, you know, in the two
11 agencies and the public, for that matter, is this is a dynamic process.

12 We have now gone through two determinations. If we didn't conduct a
13 lessons learned and ask ourselves what has worked well in this process and what has
14 not worked so well, then I think we would all be remiss.

15 And one of the things that we all recognize is that there's a lot more --
16 while there is no determination on the table right now, and there won't be one for some
17 period of time, it's an excellent opportunity, therefore, to stop and take a look at what
18 we're doing and how we're doing it.

19 And, you know, if you conduct the lessons learned and you recognize
20 there are probably going to be some changes in the process, otherwise why did you
21 conduct the lessons learned.

22 And one of the things that we have learned is that if technical staff are
23 going to sit down and talk about a process that's going to reach some common

1 approach, based upon integrating two different methodologies, they have to have lots of
2 dialogue.

3 That dialogue is preliminary in nature. That dialogue is not leading to any
4 particular determination at that point in time. And those scientific and technical staffs
5 need to be able to exchange that information.

6 And by contrast, when conclusions are reached that, okay, this is the
7 particular methodology that's going to be used, then it becomes suitable for public
8 disclosure and dissemination and perhaps discussion so that the public can understand
9 how it is we're going to proceed.

10 So the point is, both agencies want this process to be as open as
11 possible. Our Commission has asked us, directed us to make this process as
12 transparent as possible.

13 But the Commission has also recognized that there is a need for some
14 agency-to-agency meetings in the interests of improving efficiency and effectiveness in
15 the process.

16 So I think we're all saying the same thing. And I think what we're saying, if
17 I look at the path forward, again, is we want to have more meetings. We want to have
18 some meetings very quickly.

19 We want to get back to the generic issues, for example, since there is no
20 determination on the table now, and will not be for some period of time. And we want to
21 try to look at the process, what can be done to make the process more efficient to allow
22 for a reasonably free exchange of information, and keep the public aware along the way

1 through dissemination of information, whether it be summaries, future public meetings,
2 or some combination of both along the way.

3 So I think in terms of path forward, that's something we really need to be
4 focusing on initially.

5 MR. CAMERON: Okay. Thank you.

6 Does anybody -- Karen, do you have anything you want to add to that?

7 Anybody?

8 And I take it that what will happen in the future in terms of going forward is
9 that there will be some issues identified that need to be clarified, and that there will be
10 discussions between the two staffs about those particular issues, but that we haven't set
11 an agenda at this point for that. Okay.

12 All right. Anything further before we go out to the audience and the
13 phones?

14 MR. CAMPER: Just in trying to recap real quickly, I also think that, you
15 know, this issue of the SRP, we have comments from the DOE about the SRP.

16 I think that one of the discussions we will need to have pretty quickly on,
17 too, is this question of looking at the SRP. Is that the right vehicle, and does it address
18 the flexibility that they need to be more clear given that we have these two different
19 methodologies and how they both are trying to achieve the same thing.

20 I think that's something we probably need to talk about in one of those
21 discussions.

22 And I think what might be done to improve the timeliness of the review. I
23 mean, we have made a lot of progress from our standpoint. We have reduced the

1 amount of time it takes to review these things from something like 15, 16 months, down
2 on the order of ten months.

3 But, you know, are there ways that it could be done, you know, even
4 more expediently. Perhaps we need to talk about that. Is there something that can be
5 done on the front end from the planning.

6 For DOE, as you look at your schedule and your agreements with the
7 respective states in terms of timing of submission, that's something that we need to take
8 a look more at, I think.

9 But just, I think the last comment I would make before we open it up to the
10 audience, is just philosophically, one of the things -- and Ben has touched upon it, and
11 Frank has touched upon it.

12 When I look at 3116, I see something that's very unique. I see -- and I
13 alluded to this earlier in some of my comments, where these two agencies are expected
14 to work together in a consultation role to reach a conclusion that this waste incidental to
15 reprocessing is going to be disposed of, and it's adequate to protect public health and
16 safety.

17 We're both in a very unique place.

18 And one of the things that I'm convinced of is that consultation will never
19 work fully -- as well as I think we would all like for it to work, certainly the two agencies,
20 and I suspect the developers of the particular law as well -- until these two agencies can
21 work together well in advance of any determination being on the table.

1 You know, let's face it. We're all human beings. And when a particular
2 staff creates a particular determination or any other technical product, there's pride in
3 ownership. There's a lot of work that goes into it.

4 Similarly, when another staff, such as ours, is an independent regulator
5 and is accustomed to doing business in a certain way, is asked to review that, there's
6 pride in ownership, and there's pride in the outcome of the product as well.

7 What we need to do is to see these two staffs work together in meetings
8 that are both closed and open earlier in the process, prior to any determination being on
9 the table. So that when DOE has conceptualized, I want to proceed with a
10 determination, we're there to talk with you; we're there to answer questions; we're there
11 to ask questions; and we're there to figure out a path forward that makes sense.

12 I think we have not had the opportunity to do that. The timing of the
13 legislation and the timing of your preparation of the determination was such that there
14 was a determination at hand, and we had to review it.

15 There has not been ample opportunity to work together in a consultation
16 role. And I genuinely believe that if we can have meetings earlier in the process, 12, 15
17 months out prior to determination, we can get -- become much more efficient and
18 effective in this process.

19 And frankly, the public will have a better understanding of how the
20 determination process was arrived at.

21 Thank you.

22 MR. CAMERON: Let me go to Scott, and then we will go to Ben.

1 Larry has raised a number of issues just now in addition to what we have
2 discussed before that will have to be on the agenda for discussion at some point. And
3 that gives the rest of you the opportunity to do that if you would like.

4 Scott, and then we will go to Ben.

5 MR. FLANDERS: I just wanted to add a thought to one of the items that
6 Larry identified, and that has to do with the timeliness of the reviews.

7 I think, you know, that there has been comments about how long the
8 reviews have been taking. And I think the reviews, there's a couple of things that need
9 to be considered, the complexity of the reviews. And then also that when we examine
10 how to improve the efficiency and the timeliness of the reviews, I think both agencies
11 would need to look at their processes and how they develop information, how we review
12 information.

13 So I think that it's a shared need to examine that because I think it's a
14 shared – we share the current timeline as well. It wasn't all one agency versus another.

15 So I think when we look at the timeline, I think we need to look at
16 efficiencies on both ends in terms of our processes.

17 MR. CAMERON: Okay, thanks, Scott.

18 Ben.

19 MR. MCRAE: Thank you. Just picking up off what Larry said.

20 Our comments on the Standard Review Plan actually were not intended to
21 address NRC's monitoring role. And I guess we actually didn't view the Standard
22 Review Plan as a monitoring instrument.

1 And I think, and perhaps it's -- this dialogue and discussion has been
2 useful in the sense -- because I'm not sure that we, in the beginning, necessarily
3 understood the extent to which NRC was viewing the consultation as an important part
4 of them preparing for their monitoring responsibilities.

5 And, again, I think -- and we certainly have to work on this. And I think
6 what the benefit of this discussion that we have had to -- has been to highlight the fact,
7 again, our concern about the Standard Review Plan perhaps not so -- we have no
8 problem with the approaches.

9 There are, in fact, what we think is useful is for us to be able to discuss
10 them and understand the factors that has -- that have led NRC to adopt those
11 approaches so that we can understand them when we're -- when the Secretary is
12 making his decision.

13 I think it's also important in this consultation where there are different
14 approaches, different methodologies, for both staffs to understand them so that when
15 NRC is undertaking its monitoring responsibilities, it will be able to fully understand the
16 basis of the Secretary's decision, and to the -- and that they, in monitoring, they will
17 understand, you know, what underlies that decision.

18 And in making that decision, the Secretary will also be able to be informed
19 as to what factors NRC would be expecting to monitor so that it can accommodate the
20 needs of agencies.

21 But, again, I think when we started this process, we were viewing the
22 Standard Review Plan as being directed solely at the 3116(a) determination and not

1 actually having the role that NRC's staff sees for it, also helping them in fulfilling the
2 monitoring responsibilities.

3 And, again, I think it -- you know, having -- I think actually it's
4 understandable that both agencies kind of focus on what they are ultimately responsible
5 for, primarily.

6 But, again, I think it's been useful, and hopefully the revised plan will be
7 more clear about that. And I think it -- this has been useful for both of us.

8 MR. CAMERON: And I guess, obviously, Ben, I hear from what you're
9 saying, is you see -- the Department sees that the possible connection, the implications
10 of between consultation and monitoring.

11 MR. MCRAE: Well, I think it's -- I think the discussion had made it clear
12 because it is -- again, 3116 is somewhat unique.

13 And, again, it's -- by having the agency that's responsible for assessing
14 and -- in this monitoring role be an agency that's not the agency that actually makes the
15 decision that's being implemented, and that implementation is being assessed, it
16 actually is important for both agencies to have a common understanding of the factors
17 that underlie both their responsibilities, so that even if they don't agree on what is the
18 best approach, they understand the factors.

19 And -- again, and the best approach, the approach that they follow, that
20 they both think that, for their purposes, one approach is more suitable than another.

21 But they need to understand the factors and have a common
22 understanding of how they relate to the -- seeing that the performance objective can be
23 met and assessing how it is being met.

1 And so, yes, I think there is a connection.

2 MR. CAMERON: Great. And, Larry, do you want to dialogue?

3 MR. CAMPER: Well, yeah. I think that's -- and that's not just a subtle
4 recognition.

5 And we have had some dialogue.

6 I mean, you still have this fundamental difference in methodology, which
7 we need to talk more about. And, again, I think Karen's slide was graphically depictive
8 of that, and we will talk more about it.

9 But the point I would make and echo on Ben's comment is that the types
10 of information that we have been seeking in the determination phase is critical to the
11 monitoring, or assessment, that we have to do to ensure compliance to Part 61.

12 I mean, you know, you hang around the waste business long enough, you
13 know that one of the first things you have to do is you're going to assess compliance or
14 monitor performance over time, you do a performance assessment methodology in the
15 beginning. You know, what waste are you putting in the ground? What's your source
16 term? What are the engineered barriers? What's the expected performance?

17 You have to have all that type of information as a baseline. Because, from
18 that baseline of information, you determine what it is that you need to monitor. What
19 are the things that are most likely to, you know, pose problems over a very long period
20 of time.

21 And so the kind of information that we have been seeking is critical to that
22 monitoring role.

1 And I think Ben's point about recognizing that, as this has materialized
2 over time, as I said, is not just a subtle recognition. It's terribly important.

3 And I think, frankly, out of that recognition on their part, coupled with a
4 recognition on our part that there are these different methodologies that are both
5 designed to achieve a similar end objective, is progress in and of itself.

6 And we're going to have some meaningful dialogue about how we can
7 address both of those major, major issues.

8 So I compliment Ben on that. And, like I said, from my vantage point, it's
9 not a subtle recognition.

10 MR. CAMERON: Anybody else?

11 Karen?

12 MS. GUEVARA: No.

13 MR. CAMERON: Neil? Frank? Scott?

14 Okay. Let's go to the audience and the people on the phones.

15 And just let me point out that we are taking a transcript of the meeting, and
16 you can get a copy sent to you.

17 I think the NRC will consider posting that on our website, possibly. But
18 because we are taking a transcript, we just need to make sure that we get your name
19 correctly.

20 So that when you come up to the mike to speak, or if you're on the phone,
21 if you could just give us your name clearly. And we may want to check the spelling to
22 make sure that we have that right at that time.

1 And we're going to focus on the people in the room first, and then go to
2 the people on the phones with one exception. The state governments have an
3 important role, obviously, in this process. So I wanted to give the states an opportunity
4 to comment or ask questions first.

5 And I should introduce, our court reporter is Joe Inabnet, and he will be
6 preparing the transcript for us.

7 And let me -- and I apologize for not knowing the state players now, but is
8 there anybody from the state in the room here that wants to make a comment or ask a
9 question?

10 Okay. Let's go to the phones, and do we have South Carolina on the
11 phone?

12 MS. SHERRITT: Yes. This is Shelly Sherritt from the South Carolina
13 Department of Health and Environmental Control.

14 MR. CAMERON: And, Shelly, just let me make sure that we have the
15 spelling because I'm not sure Joe got that.

16 It's -- could you just spell your last name for us?

17 MS. SHERRITT: Sure. It's S-H-E-R-R-I-T-T.

18 MR. CAMERON: Okay. Exclamation point at the end, I guess.

19 Did you get that, Joe?

20 Okay, thanks. Go ahead.

21 MS. SHERRITT: Okay. Well, it's been good to listen into the discussions
22 this morning. And I just want to point out that we appreciate these discussions and the
23 concept of identifying lessons learned and applying them.

1 And in fact, as Larry noted, our agency has been involved in the past in
2 some of those discussions. And so we certainly appreciate the fact that you're having
3 this discussion at all, with that intent.

4 We are concerned that, as was noted earlier, that the Secretary of Energy
5 has the full authority to make a waste determination, and that authority is identified in
6 3116.

7 And yet at the present time, DOE is missing tank closure commitment
8 dates that have been made to the state as part of our Federal Facilities Agreement.

9 And so, you know, we're also concerned that really more than two years
10 after the passage of Section 3116, it's still unclear the process that will take place so
11 that DOE will be set up to meet the rest of the tank closure commitment dates to South
12 Carolina.

13 So, you know, we would just encourage that whatever pieces are at odds
14 or whatever pieces need to be resolved, that they are, so that a process can be clearly
15 identified -- with input from the affected states -- a process identified so that it's clear
16 that DOE can implement the Section 3116 consultation and other pieces in a manner
17 that will set up compliance with the current and the out year commitment dates for tank
18 closures.

19 MR. CAMERON: Okay. Thanks. Thank you, Shelly.

20 And I think we heard a couple of at least general concerns expressed
21 around the table about improving timeliness of this process.

22 But I think that Frank Marcinowski wants to address your question more
23 directly, or your concern.

1 MR. MARCINOWSKI: Sure. Hi, Shelly.

2 I know we have talked about this recently in the past, and I guess we view
3 this discussion today as an important part of moving that process forward and
4 identifying, you know, what the process is that we will use in the future for, you know,
5 making the, I guess, the waste determination process be more efficient and enable it to
6 meet the deadlines and the commitments that, you know, we have made to you in
7 South Carolina on the tank closure milestones.

8 And it is our intent to fully do that.

9 I mean, as you know, we have missed some recently, and we're working
10 with you now to try and re-establish new deadlines on those.

11 But I think, you know, we know the immediacy of trying to -- of engaging
12 NRC and yourself, again, in those discussions, on those outstanding issues that will
13 move this process forward.

14 And it is fully our intent to do just that.

15 MS. SHERRITT: Okay. Thank you, Frank.

16 MR. CAMERON: Anybody else, on this issue?

17 MS. THOMAS: I'm not with the government. Are you still with the
18 government people?

19 MR. CAMERON: Yeah, we still are. And don't worry. We will go back to
20 the phones to get your comments.

21 I want to see if the State of Idaho has anything to add at this point.

22 MS. TREVER: This is Kathleen Trever, Kathleen, with a K, T-R-E-V-E-R,
23 with the State of Idaho.

1 And on another line, because we're in two different Idaho cities today, is
2 Bruce Olenick, and I'll let him spell his name after I say some things.

3 I think one of the issues -- and we have documented this in our letter
4 evaluation of the waste determination as part of the Nuclear Regulatory Commission
5 consultation process -- is one area that we think would be helpful to efficiency and not
6 having confusion over agency roles, is having clearer methodology on the Department
7 of Energy part, things like concentration averaging. But we spell those out in our letter.
8 I don't think we need to go into it further.

9 But that's an issue where we identified some better transparency on
10 DOE's part -- if it wants to use different methodologies -- then the Nuclear Regulatory
11 Commission would be helpful to us.

12 I was also pleased to hear Frank's comment about the importance of
13 public involvement. And I hope that extends to the simple things like publication of the
14 determinations when they come out, but that's probably an issue for another meeting as
15 well.

16 Having said that, Bruce, do you want to add anything?

17 MR. OLENICK: Yeah, just real quick. This is Bruce Olenick.

18 MR. CAMERON: And could you just spell that for us, Bruce?

19 MR. OLENICK: You bet.

20 MR. CAMERON: The last name.

21 MR. OLENICK: O-L-E-N-I-C-K.

22 MR. CAMERON: Thank you.

1 MR. OLENICK: And, again, I just wanted to reiterate what Kathleen just
2 mentioned, and that is the NRC has done, I think, a very good job of spelling out, using
3 the SRP process, of the types of approaches they would like to use in order to push this
4 consultation process forward.

5 And I would encourage DOE -- because at this point in time, most of
6 DOE's processes are not documented in that same fashion, and so it's very difficult to
7 see that transparent logic.

8 And going back to what Larry said earlier, that the generic technical
9 issues, I think, really are the areas in which these differences lie. And without having
10 NRC's plan A on one side and DOE's plan B on the other side and be able to compare
11 those one on one back and forth, it's very difficult to reach resolution in these
12 processes.

13 So, again, I encourage DOE to continue to move forward on some of
14 those issues.

15 The other thing I wanted to mention very quickly was we talked about
16 inefficiencies. And both sides have come out and said, Well, there's inefficiencies, and
17 we want to improve. And -- but I'll ask generically, though, is have we done an
18 efficiency analysis? Have we really nailed down where we think those inefficiencies are
19 rather than just making some assumptions as to where we think they are.

20 Now, of course, we don't want to spend two years doing an efficiency
21 analysis. That would kind of defeat the purpose.

1 But, nonetheless, I think taking a look, at least from the states'
2 perspective, that the internal reviews by both agencies seem to be a culprit in this
3 particular issue as well.

4 And so, you know, whether it be words missing or the types of gyrations
5 that happen typically in a general review, those should be looked at very seriously and -
6 - rather than looking at each agency in the process, such as the SRP, look internally
7 and say, Hey, you know, what are we doing wrong inside our own agencies to pull this
8 along.

9 So that's it. I think the emphasis really comes down to what Larry
10 mentioned earlier, is that the generic technical issues really is where, I think, the biggest
11 gains can be had, as long as both sides develop the methodologies, put them on the
12 table and then hash them out.

13 So that's my perspective from Idaho.

14 MS. GUEVARA: Bruce, this is Karen Guevara. I want to briefly address
15 your question about what sort of inefficiency analysis, if you will, did we conduct.

16 In looking at the timing of the actual issuance of a draft determination for
17 public comment and for NRC consultation, it is clear to everyone that the time is lost in
18 the requests for additional information.

19 What's behind that taking so much time is that the NRC requests for
20 additional information typically have to do with approaches and methodologies and
21 assumptions sorts of questions.

22 And it is in the RAI phase, resolving the requests for additional
23 information, that we find ourself wrestling with the fact that we approached it differently.

1 I think Frank mentioned we spent a lot of effort doing, you know,
2 reanalyzing, doing additional modeling, running sensitivity analyses, and so that really is
3 the focus. That's the efficiency improvement we're looking for, is that we not try to
4 resolve major technical policies on an individual waste determination after all of the hard
5 work, you know, initial work has been done by DOE, but rather, as most agencies would
6 do, you set your technical policies, and then you implement those policies.

7 We find ourselves implementing our technical policy under 435.1, and
8 then the RAI process is kind of pulling us out of that methodology to address the NRC's
9 10 CFR 61 methodologies, and that's just a very inefficient way to do it.

10 So that is -- that is, if you will, the result of our analysis. We are
11 desperately trying to reduce, dramatically reduce the RAI phase of any given waste
12 determination consultation.

13 MR. CAMERON: And, Scott --

14 MS. TREVER: If I could follow up briefly on what Karen had to say.

15 Both, given a look at this 3116 is based on the 10 CFR 61 standard, have
16 you tried to look at coming at it from the 10 CFR 61 standard as opposed to completely
17 starting from the 435.1 methodology?

18 MR. CAMERON: And this is Ben McRae, Kathleen, responding to your
19 question.

20 MR. MCRAE: And I think -- and I don't want any confusion here.

21 We have come from the waste determinations for Idaho and South
22 Carolina from the 3116 perspective. There are criteria that are in 3116(a) that the
23 Secretary has to determine are met if the provision of 3116(a) is to operate.

1 And that's -- I think, what we're talking about is not regulatory
2 requirements that NRC has. We're talking about guidance. We're talking about
3 preferences on modeling. We're talking about what type of -- whether you're going to
4 do a deterministic, probabilistic analysis.

5 There are a number of factors which are not in the regulations, which I
6 suspect that the Commission would not say are regulatory requirements that have to be
7 met for the Commission to make a decision, that they are certainly things that are taken
8 into account; and, as part of the process, they are weighed.

9 So I think what we're working at, and I think what we have been trying to
10 struggle -- what we have been struggling with is how, on those approaches, on
11 guidance, on factors, on different ways of approaching whether or not the regulatory
12 requirements that are set forth in the 61.55, is it, the classification provisions, you know,
13 how best to show -- make the determination that they are met, and that's really what we
14 have been working with.

15 And, again, I think, again, we have approaches on modeling, and we have
16 approaches on what factors to take into account. And where they differ from those that
17 NRC would normally follow, I think that has resulted in the request for additional
18 information.

19 And I think what would be, as many people have said, what would be
20 useful is to try to come to a common understanding so that when we -- at the up front.

21 So when we do the performance assessment, when we do the modeling,
22 when we are picking what factors to look at, that there would be hopefully a common

1 understanding between the DOE staff and the NRC staff that, these are good factors;
2 this is a good approach; we can both live with this.

3 We both, you know, this is -- and that will eliminate the need at the end --
4 when the analysis is actually done, when there are actually draft conclusions out there
5 for people to comment on, it will hopefully minimize the need for the request for
6 additional information, the need to run additional sensitivity analyses.

7 It may well be that when it's done, NRC will say, or a member of the public
8 will say, you know, we still think you need to do more, or this is still unclear. And
9 certainly, that kind of public involvement is important.

10 But hopefully, we will have a better product when we put out the draft
11 determination, and there will not be as much of a need for these additional information
12 or additional sensitivity analyses to help people assess the information that the
13 determinations will be made on.

14 MR. CAMERON: Okay. Thanks. And I think Scott has something to say
15 to either Kathleen or Joe's (sic) points.

16 Go ahead.

17 MR. FLANDERS: Yeah. I wanted to first thank Kathleen and Bruce and
18 Shelly for their comments, and just to touch on Bruce's last comment on efficiency
19 analysis.

20 Certainly, a lot of the discussion and a focus on some of these generic
21 issues, that's really low hanging fruit that we really need to get to. So there's a lot -- lots
22 of things we can do to make the process more efficient.

1 But one of the things that we do at NRC as a practice is, after we
2 complete a major activity like this, we actually go back and do an internal lessons
3 learned and examine our processes and what we have actually done and look for ways
4 to improve efficiencies.

5 And a lot has been made about the time it takes to -- or the amount of
6 RAIs and a lot of time that people feel is lost in the RAI process.

7 But one of the things that we recognize in looking at it is the challenge that
8 the NRC staff faces in its initial review to generate those RAIs.

9 We're looking at thousands of pages of documents, if you will. And it
10 takes a great deal of time to go through that material. And we have really worked hard
11 to try to generate RAIs in a timely way. But there are some things that I think we -- I
12 would want to address with the Department in terms of trying to provide us with
13 information in a more user friendly way, if you will, that would also help improve the
14 efficiency of the timeline.

15 So we are looking at things like that, that would help us improve the
16 efficiency of the timeline beyond some of the more obvious things that we have been
17 talking about today.

18 MR. CAMERON: And, Larry, anything?

19 MR. CAMPER: Well, I want to make a comment.

20 Shelly and others, thank you for your comments. And just for a moment
21 on the performance objectives and Subpart C of Part 61.

22 They are performance objectives. And by their nature, they are therefore
23 outcome oriented.

1 You know, it deals with protecting the public, the intruder, the worker, and
2 for site stability. But if you go look at the language in Subpart C of Part 61, you will find
3 very brief paragraphs.

4 They are not a prescriptive type of regulatory language as is the custom in
5 other parts of Part 61. But by their very nature, if you're looking at a regulation that has
6 a performance objective, you have to recognize then that there are many different ways
7 to ensure that that outcome is achieved.

8 There's a lot of guidance that was created when Part 61 was put in place.
9 But the fact of the matter is what's taking place here is, I would suggest, substantially
10 different than what takes place in a typical low-level waste disposal facility.

11 And so we are bringing to bear those performance oriented outcomes to
12 this particular disposal methodology, recognizing that what you're really looking for is
13 successful outcomes.

14 And DOE has a methodology. We have a methodology of evaluating the
15 submittals that are provided to us.

16 And the question -- I think the challenge for the two technical staffs is, is
17 how do you marry those two and walk away comfortably, being assured that you are
18 achieving the desired outcomes that those performance objectives call for.

19 MR. CAMERON: Okay. Bruce and Kathleen, we're going to go back to
20 the room at this point. Thank you for those comments.

21 And I just want to assure the people on the phone that do want to make
22 comments, we will go back to you. I was assured that the phone line would not be
23 turned off at the stroke of 11 o'clock.

1 MR. LETOURNEAU: We have until 11:30.

2 MR. CAMERON: Okay. Good.

3 So we won't miss you on the phone, but let's go to the room.

4 And, sir, if you don't mind stepping to the mike and just introducing
5 yourself for us.

6 Thank you.

7 MR. HANSEN: Hi, everybody. My name is Brian Hansen.

8 Do you want me to spell that?

9 MR. CAMERON: Sure.

10 MR. HANSEN: It's B-R-I-A-N, H-A-N-S-E-N.

11 MR. CAMERON: Thank you.

12 MR. HANSEN: And I'm a reporter at Platts News Service here in DC.

13 And I would like to ask you about the subject of closed meetings that
14 came up earlier.

15 And, by the way, just so you all know, I'm the reporter who wrote many of
16 the stories about the closed meetings this summer.

17 Now, you all said that, going forward, you saw a need for some closed
18 meetings, agency-to-agency meetings.

19 Now, as a reporter, I sort of have a bias against that, but I'm not going to
20 take issue with that.

21 Larry, though, said that the best sorts of meetings that could be closed
22 would be, he said, preliminary pre-decisional information. Okay.

1 I see a big difference between that on the waste determinations and what
2 you have before you now, which is this Standard Review Plan, 100 and some pages
3 long, that DOE has asked NRC to withdraw, to scrap it, to start totally over.

4 You didn't all say so, but I get the impression that, you know, when you
5 come to looking at the SRP, that you're going to try to do this in a closed meeting. You
6 didn't say so, but I get that impression.

7 So, first of all, I would like to ask anyone who would like to respond to this,
8 if you -- you know, when DOE gets together with NRC to discuss, not the
9 determinations, but the SRP, will you do that in open or closed meetings?

10 And if you want to do it in closed meetings, why would you want to do
11 that?

12 Thanks.

13 MR. CAMERON: Larry, do you want to try to address that question?

14 MR. CAMPER: Thank you, Brian, for your question.

15 I cannot sit here right now, Brian, and say that we have determined ahead
16 of time which of these meetings would be open or which ones would be closed. I
17 mentioned that during my comments that we will look at these on a case-by-case basis
18 as we move ahead.

19 We want meetings to be as open as possible, as I said, and as open as
20 practical. But, yet, there's also recognition some need to be closed.

21 But I look at the SRP comments a little differently than you characterized
22 it. I look at the SRP, and it gets back to -- if I look at some of DOE's concerns that they

1 have expressed, they really fall into two camps in my mind. One is process, and one
2 deals with methodology.

3 It may well be that some of those discussions along the way, whether they
4 be process or methodology, are most suitable from an efficiency standpoint to be an
5 agency-to-agency meeting. It may be that some of them are more suitable for public.
6 So I -- it's difficult to sit here right now and say that every discussion we have about the
7 SRP will be either open or closed.

8 What to do is look at the agenda and the topic that we're going to focus on
9 in a particular meeting and make that determination.

10 MR. CAMERON: And just let me clarify our plans in terms of the SRP
11 comment analysis.

12 We requested comments, and I -- I take it that we're going to address
13 those comments, and that disposition of comments, consideration of comments will --
14 there will be a public record to that.

15 Is that correct?

16 MR. FLANDERS: Our intent really is, you know, the SRP is a document
17 that we, NRC, chose to make available for public comment because we value the input.
18 It's not something -- it's not similar to our INEPA process where it's a required activity.

19 And in doing so, we got comments from others other than the Department
20 of Energy.

21 We have 12 comment letters. And what we need to do is, as we decide
22 how we might revise the SRP, we need to take into consideration all of those

1 comments. We can't just look at any one set of comments in isolation. We need to
2 consider all of those comments.

3 And then once we consider all of those comments, we will decide how
4 we're going to revise the document, and then revise the document.

5 And in revising the document, that will ay out, you know, how -- the
6 decisions and the positions that we took relative to the comments that were given to us.

7 So the intent is not to just look at one set of comments in isolation, but is
8 to look at -- we have to look at them all.

9 I mean, because we did get comments from several other states and other
10 entities as well, so -- and we need to look at all those comments.

11 MR. CAMERON: Right. And I just wanted to, if it's any reassurance, is
12 that there may be aspects of the SRP that are the subject of an agency-to-agency
13 meeting.

14 But once we resolve those comments that we got from the public, they're
15 going to be presented in a public way for people to understand why we resolved the
16 SRP.

17 MR. FLANDERS: Once we finish revising the SRP, certainly any
18 questions or -- that people may have on how we address the comments, we will be
19 more than happy to answer. And there -- so, you know, we will certainly make
20 ourselves available to address issues in terms of how we address comments.

21 But hopefully, in the document itself, it will be transparent in terms of how
22 we revised it, how we addressed the comments.

1 But certainly, people can't see that from the SRP and how it's modified.
2 We will be certainly happy, you know, to address any questions that people may have in
3 terms of how the comments are resolved.

4 And certainly, any critical decision points, you know, that come out of
5 agency-to-agency meetings that affect information in the SRP, we will be more than
6 happy -- as Larry said, he doesn't want to predispose how best to address that in a
7 public way, but we will address that in some fashion in a public way.

8 MR. CAMERON: Okay. And, Larry, could -- let's -- Karen has a point,
9 and let's go there, please.

10 MS. GUEVARA: I just want to provide one context piece here, and that is
11 that, you know, it is a Standard Review Plan. And so the next critical juncture for use of
12 a review plan is that we give the NRC a draft determination for their review.

13 Given the timing of tank closure activities that's planned at the Savannah
14 River site under our Federal Facility Compliance Agreement, we don't anticipate that the
15 next determination will be in the hands -- will be issued in draft form for another couple
16 of years.

17 And so it's important to understand -- Larry alluded to it -- that we have
18 some time here. And so there will be no direct application for the Standard Review Plan
19 to be applied to anything just because we're past these initial determinations.

20 And the timing is such that we have a bit of time to resolve these issues
21 and figure out whether there are modifications to the Standard Review Plan, and to kind
22 of draw this to a close before we really get to application of any of these changes to the
23 next waste determination.

1 MR. CAMERON: And Larry's further response to Brian.

2 MR. CAMPER: Well, I just want to build upon Scott's comment.

3 You know, customarily when we develop an SRP and we go out and
4 solicit public comments, we do not in every case -- in fact, in most cases, we do not go
5 back and identify dissemination of public comments, unlike a rulemaking, where you
6 clearly articulate the dissemination of all comments. And they're classically grouped
7 together by subject matter or focus, and you articulate how you -- disposition those
8 comments. But an SRP is a little bit different.

9 Now, having said that, I think we view this SRP as a slightly different SRP.

10 And I think, you know, picking up on Scott's point, I think if it's one of the
11 things we're going to have to do if we revise this SRP in any way, is when we read it
12 and do a gut check on it, if it's not clearly apparent what change has been made or why
13 that change has been made, then we're going to want to figure out some methodology
14 to provide public awareness of what was changed and why.

15 Now, is that footnotes in the SRP itself? Is it some descriptive appendix?
16 You know, is it some separate document that you post on the web? I don't know.

17 But given the nature of this particular document and the interest that's
18 been generated in it, and the fact that it is unique in that it focuses on the consultation
19 arrangement between the two federal agencies, as well as our assessment in the
20 compliance space, we will want to make sure we do something to make it very clear.

21 I just don't know what that is yet, but we will certainly make that readily
22 available and aware publicly.

23 MR. CAMERON: Okay. Thanks. And thank you for the question.

1 Geoff. Geoff, do you mind coming up?

2 MR. FETTUS: Not at all.

3 MR. CAMERON: I would bring it back out, but I'm not feeling to agile
4 today, so thank you.

5 MR. FETTUS: Hi. I'm Geoff Fettus, G-E-O-F-F, F-E-T-T-U-S, with the
6 Natural Resources Defense Council.

7 I almost don't even know where to begin, so in that light, I'll try and be
8 very, very brief. Admittedly, I found this process disappointing today. To cut right to the
9 chase, you're doing the business of the public. And this is the business of the public in
10 one of the most contentious and watched processes -- processes that has been done in
11 environmental work in the last decade or so, and that is the clean up of the high-level
12 waste tanks.

13 And Congress has been involved, several federal agencies, members of
14 the public, governors, states. This has been an extraordinary process.

15
16 And what I feel like I have just seen today was a scripted performance that
17 takes us towards the public basically finding out, oh, at some point down the road how
18 the generic technical decisions have been resolved.

19 And let me get right to what I see is the major point.

20 These key generic issues that you had on the PowerPoint, the point of
21 compliance, concentration averaging, having been some of the most contentious issues
22 with this remarkably important process.

1 And what I heard today was that we may or may not have open meetings
2 about decisions on how the NRC and DOE will bring their methodologies together in
3 resolving those issues.

4 And to in any way describe those as preliminary, pre-decisional, or non-
5 germane, which is, as I understand, is the applicable criteria from MD 3.5, is
6 breathtaking.

7 So with that very strong statement, a couple further comments.

8 I didn't hear any discussion today of the express directions from members
9 of Congress that the Commission received at the end of August.

10 I heard no discussion of the significant statements that were internally
11 bandied about within the Commission itself. And some, as far as I understand it, some
12 significant disagreement within the Commissioners themselves, as well as the staff.

13 And as just a final comment, this is a fundamental issue of singular
14 importance going forward.

15 The SRP is, as you know from our extensive comments, we lauded the
16 NRC -- and I stand in sort of shock that here I am supporting the NRC on something,
17 where -- and I will admit to the irony of that.

18 But the NRC did a very credible job that we think could be substantially
19 improved with our suggestions that we submitted in a timely manner. But the SRP was
20 a very credible job on standardizing a review process for a terribly important public
21 procedure.

1 And let's be really frank. I don't expect to be brought into conference calls
2 or for you guys to conference me in when staff is calling each other about modeling and
3 getting data or confirmatory analysis on something.

4 But when there are decisions and discussions about the point of
5 compliance, and discussions about the parameters for modeling and how the NRC is
6 either going to recede or not recede in how it understands assessing, not ensuring, but
7 assessing compliance with Part 61, those are powerfully public issues.

8 And this was not heartening today to watch, and nor did this provide any
9 of the hopefully positive future that we could have in terms of engendering public trust in
10 this process.

11 Thank you.

12 MR. CAMERON: Thanks, Geoff.

13 And I guess, I would respond at least a little bit in terms of your concerns,
14 which I think are valid concerns.

15 I don't think it's clear to the agencies yet what the exact process is going
16 to be. And I think that process has to be informed by concerns such as you just
17 expressed.

18 Larry indicated, Frank indicated that there would be a need for agency-to-
19 agency meetings to discuss these issues. That does not rule out that there would be a
20 public meeting to have public discussion of those issues, also at some point, rather than
21 the decision perhaps being handed to you as a fait accompli.

22 And that's all I can say at this point because I don't think that we have
23 reached decisions on that.

1 Now, Larry, do you disagree with the fact that there may be a possibility of
2 public meetings to -- to get input?

3 MR. CAMPER: Oh, no. Not only do I not disagree, I indicated in my
4 comments that there would be an effort along the way to make sure that the public is
5 aware. If we have closed meetings, then there is a need to keep the public informed
6 along the way as to what's being discussed in those public meetings.

7 What I said was, I don't know what that format is yet, whether it be a
8 summary of a public meeting, or will it be at some critical juncture when we decide to
9 hold a public meeting, or we put some other information out for awareness.

10 But the point I want to make here is if you take the generic technical
11 issues for a moment, another comment that I made was, as we discuss these generic
12 technical issues and decisions are reached about how one of those particular issues is
13 going to be addressed and then subsequently used in a determination, that's an
14 important juncture which to explain to the public what went on in those deliberations, the
15 basis for that decision, and how it would be used.

16 So there's no intention whatsoever not to make the public fully aware of
17 what goes on and how these generic issues are addressed or how they will, in fact, be
18 used prior to a determination being provided.

19 MR. FETTUS: Can I just ask a question for point of clarification?

20 MR. CAMERON: Can you hear him, Joe?

21 MR. CAMPER: You probably should come to the microphone, Geoff.

22 MR. CAMERON: And while you're coming up, Geoff, let me just get Ben
23 McRae on record here in response to your comments, so that we can -- go ahead, Ben.

1 MR. MCRAE: Well, I think it's important to note, again, that the Secretary
2 is making the decision.

3 And thusfar, our policy has been to make our -- a draft determination
4 available that sets forth the basis on which the Secretary is considering the various
5 criteria.

6 And that takes -- and then to consult with NRC, and to take into account
7 that consultation, and to take into account the comments, if any, that we received from
8 the public.

9 I have to say, we have not received that many comments from the public
10 thusfar in the determinations. But that we are -- we do articulate in those draft
11 determinations the basis on which the Secretary is going to consider making the
12 determination as to whether or not the criteria are met. And that affords the public a
13 chance to comment and participate.

14 We're not trying -- and, as I said before, that's not something that's
15 required under 3116. That's something that the Department decided to do, and that we
16 are making the draft determinations available. We are taking into account the public
17 comments that we receive.

18 And then we will have to defend the reasonable basis on which the
19 Secretary makes the determination as to whether or not those criteria are met.

20 Thank you.

21 MR. CAMERON: Geoff.

22 MR. FETTUS: I'll be very brief.

1 And I don't want to get into a discussion of particulars, but we did respond
2 extensively to the Saltstone WIR determination and never received any response to
3 comments in any form.

4 We also commented vigorously on several NRC follow-ups to that, but we
5 will -- we can discuss that later.

6 Larry, the question or actually the way you articulated your response was,
7 I think, precisely what my comment was getting to, was letting the public know the basis
8 of what you have already decided, which was -- which to me sounds like very old
9 school, decide, announce, and defend, rather than involve the public from Step 1.

10 MR. CAMERON: Okay. That's an important clarification. And I was
11 remiss in only directing my comments towards Larry.

12 Obviously, the Department is -- with its consultation role, is infinitely
13 involved.

14 MR. MCRAE: But I think on the Standard Review Plan, that is the NRC's
15 document and --

16 MR. CAMERON: And that was -- I think that was just one aspect.

17 MR. MCRAE: -- it is your call as to how that goes forward.

18 MR. CAMERON: Right. Okay. And I guess the one -- the comment
19 about the commissioners and Congressional concern, I mean, certainly, I know that our
20 commissioners will be informed of what transpired at this meeting, as well as
21 comments.

22 Let me go back to the phone to just make sure we don't get cut off.

1 And, Ben, did you have -- okay, Bob, let me see if there's anybody else on
2 the phone.

3 Is there someone else on the phone who hasn't spoken yet that has a
4 question or a comment?

5 MS. THOMAS: Yes, I don't know whether somebody else answers.

6 MR. CAMERON: Well, go -- why don't you take it away.

7 If you could just introduce yourself to us.

8 MS. THOMAS: I'm Ruth Thomas.

9 MR. CAMERON: And how do you spell your last name, Ruth?

10 MS. THOMAS: Thomas, T-H-O-M-A-S.

11 MR. CAMERON: Okay. Ruth Thomas.

12 Go ahead, Ruth.

13 MS. THOMAS: Well, I'm concerned about this, what has been a called
14 unique approach with this 3116.

15 And also some of the last speakers mentioned that there were no
16 comments from the public regarding -- well, I'm not sure whether they meant in relation
17 to the Standard Review Plan or some of the -- or in relation to comments to the
18 Department of Energy.

19 But our -- the organization I'm with, Environmentalists, Incorporated, has
20 been involved in studying and researching nuclear plans and proposals for -- since
21 1972.

1 And we see a big difference between the way high-level radioactive waste
2 and waste from reprocessing is thought of in the more recent developments and
3 especially in this 3116.

4 I mean, the idea that there's going to be shallow land burial there at the
5 Savannah River plant involving waste that has the potential that these wastes have --
6 and I know there are treatment arrangements and so forth, but it's not clear at all to
7 many people that this is something that -- well, it's certainly something that takes a lot of
8 consideration when you're talking about the length of time that these materials are a
9 danger.

10 And if the explanation of this -- and now, I would like to know, too, at this
11 point, are there some documents that have not been commented on by the public, that
12 need to be, to question the going ahead of -- without what certain groups and scientists,
13 independent scientists seem to think is -- needs to be -- have greater consideration.

14 MR. CAMERON: Okay, Ruth. Let me try to get some clarification for you.

15 I think I can say that, you know, we have received comments on the
16 Standard Review Plan.

17 I think that the comment that might have sparked your question is a
18 comment that Ben McRae said about comments on --

19 MR. MCRAE: I think that I said -- I didn't say that we hadn't received any,
20 that we had not received many comments on draft determinations.

21 MR. CAMERON: Okay.

1 MR. MCRAE: And those were the -- we had issued three draft
2 determinations. One on the Saltstone facility in South Carolina, and that was also then
3 finalized as a final determination.

4 We had a draft determination on, I think, two tanks at Savannah River.
5 That is -- was issued about a year ago. And there was a public comment period.

6 And then there was also about a year ago a draft determination on the
7 tank farm at Idaho. And again, there was a public comment period on that document.

8 Those are the three documents that I'm aware of at the Department of
9 Energy that relates to the 3116 process that we have issued and provided for public
10 comment on.

11 MR. CAMERON: Okay. Thank you, Ben.

12 And I think that is an answer to your question, Ruth.

13 And what I'm going to do is go back to people in the room, and then we
14 will go back to the phones.

15 And, Ruth, we have some more for you from Larry Camper.

16 MR. CAMPER: Well, I just wanted to go back to Geoff's comment for a
17 moment.

18 You know, I want to reiterate what I said -- and I don't think I said, and I
19 certainly didn't mean to give you the impression that every discussion that we're going
20 to be having about these generic issues would, in fact, be agency-to-agency, and
21 therefore a closed meeting.

22 As I said, we will look at these on a case-by-case basis.

1 Some of those discussions may be as simple as you said, whereby two
2 environmental scientists are talking to each other on a conference call about some
3 technical subtlety.

4 By contrast, there may be a point in discussions on these generic issues
5 where we reach a point and we say, Wait a minute. We're gravitating toward an
6 approach. We're gravitating toward a generic approach that will work.

7 At that time, we need to stop and look at where we are and ask ourselves,
8 Is it time to open this thing up and not have it be an agency-to-agency meeting.

9 So nothing was meant to imply or insinuate or otherwise that they're going
10 to all be closed meetings. So I mean, we understand your concern.

11 The question is how do we balance efficiency and getting an open
12 exchange of information between these two agencies so we can resolve these generic
13 technical issues or other issues that have risen in the process, make the process more
14 efficient, move ahead in the future so it doesn't take as long to get their determinations
15 evaluated, and yet do so in a way that makes the public aware and have an opportunity
16 to participate.

17 So we're going to do this on a case-by-case basis.

18 MR. CAMERON: Okay, thank you.

19 Bob, Bob Alvarez.

20 MR. ALVAREZ: My name is Robert Alvarez,

21 A-L-V-A-R-E-Z. And I'm here representing the Yakama Nation. And that's
22 spelled Y-A-K-A-M-A.

23 A comment and a question.

1 The Yakama Nation has been pretty consistent about looking at the NRC
2 as a form of quality assurance, at the minimum, relative to the disposal activities of the
3 Energy Department.

4 And I think that that has also been the broad intent of bringing NRC into
5 consultation role in this law, which I think needs to be recognized by the Department.

6 The failure to have adequate quality assurance is demonstrated in the
7 solid waste EIS litigation that took place involving Washington State and the Energy
8 Department, where it was revealed, during discovery as opposed to an internal peer
9 review or technical review process, that the attenuation model that was underlying the
10 waste performance determinations for this site relative to long-lived radionuclides, had
11 such basic and fundamental errors that it implied, perhaps, that fraud might have been
12 committed.

13 And so without that form of quality assurance in that regard, I think it
14 would be very useful in general and to the public, and perhaps to the agencies, that a
15 side-by-side document be prepared of the -- explaining and showing that the -- what the
16 differences are between the methodologies and approaches here so that there's some
17 clarity and maybe some formal efforts to reconcile this.

18 The question I have has to do with the Hanford site. As you know,
19 Hanford was not included in this statute after a considerable amount of opposition and
20 legislative history.

21 And so, given that Hanford is not in this legislation, what are your views,
22 DOE and NRC, with respect to your roles and responsibilities relative to waste
23 determination decisions at the Hanford site?

1 MR. CAMERON: Karen.

2 MS. GUEVARA: Under the Hanford tri-party agreement, there is a
3 provision that should we fail to retrieve 99 percent of the tank waste by volume, that we
4 -- there is an exception process for us to leave more than 1 percent of the residuals in
5 place upon consultation with the Nuclear Regulatory Commission.

6 As you point out, however, because that is not under Section 3116. It
7 does point to DOE Order 435.1, the Radioactive Waste Management Order. And so it
8 is a case in which the NRC does consult with us.

9 I think the difference is that it is them consulting with us on use of our
10 methodologies under 435.1 rather than the scenario that 3116 evokes, in which the
11 NRC pulls the monitoring role under 10 CFR 61, and, therefore, this RAI issue of trying
12 to resolve the methodologies after we have done our initial calculations.

13 So the intent is for the NRC to consult with us on Hanford tanks per the tri-
14 party agreement, tri-party agreement being the shorthand designation for the Federal
15 Facility Compliance Agreement between the state EPA and the Department of Energy.

16 MR. FLANDERS: I would just add to Karen's comments to that, the tri-
17 party agreement, as Karen says, is between the Department of Energy, EPA, and the
18 state. So the NRC is not a party to that agreement.

19 But certainly, if the Department comes in and asks us to -- or requests that
20 we consult, certainly, we have been doing that, and we would do that if they request it.

21 And the consultation process would be as Karen described.

22 MR. CAMERON: Okay. Anybody else on that?

1 Let me just see if there's anybody else on the phone who hasn't spoken,
2 that has a comment or a question for us.

3 Okay. I think we have taken care of the phones.

4 Is there anybody else in the audience?

5 Diane.

6 MS. THOMAS: Could I follow up on what I ...

7 MR. CAMERON: Ruth, let us get to some people in the audience, and if
8 we have time, we will come back to you for a follow-up. Okay?

9 MS. THOMAS: Okay, thank you.

10 MR. CAMERON: Diane.

11 MS. D'ARRIGO: Diane D'Arrigo with the Nuclear Information and
12 Resource Service, and I have a concern.

13 I was -- we have belabored the closed meeting issue a bit, but could you
14 give me an example of some kind of an issue that is not worthy of a public meeting or
15 public disclosure?

16 And, yeah, that would be one.

17 MR. CAMPER: Well, I wouldn't agree with the characterization of not
18 worthy of.

19 MS. D'ARRIGO: Oh.

20 MR. CAMPER: That's not where we come from on this.

21 I mean, again, what we're trying to do, Diane, is recognize that there's a
22 need to exchange information that is preliminary, that is pre-decisional. It may be

1 conceptual in nature. It's not associated with a particular determination that we're going
2 to make an evaluation or make a call upon.

3 I mean, I can give you the criteria that we believe applies. I can't identify a
4 particular subject matter as we speak. We will have to look at those on a case-by-case
5 basis.

6 But it's going to be something that is preliminary, pre-decisional,
7 conceptual, not associated with a given determination.

8 And it may be that there will be technical exchanges as we address
9 solutionary issues that will lead to a point when it's appropriate and suitable to discuss it
10 with the public as we get closer to, or as the DOE gets closer to, in particular, an
11 approach they're going to use.

12 But it will certainly be of that nature. I can't give you an example of a topic
13 right now. It's going to follow those kinds of guidelines consistent with Systems
14 Management Directive 3.5.

15 MR. CAMERON: Is there anybody else who might have a specific
16 example for Diane?

17 Ben.

18 MR. MCRAE: Well, I think Geoff gave one, that it may well be that
19 technical experts may well be talking about issues which are not generic, but just on
20 how you would address certain information or whether or not they have looked at the
21 preliminary information and they have a question about it.

1 These are the kind of things which normally happen at agencies without
2 the public being involved as you're trying to get your information to a level of quality
3 where you do put it out for public comment.

4 And, again, it's hard to say.

5 I mean, as I said, we have made these supporting documents available to
6 public comment on the first three determinations.

7 Again, one of the issues here, which makes this somewhat of a unique
8 issue, is that the decision maker is the Secretary. So we – actually what we are talking
9 about are performance objectives that are already in the NRC regulations.

10 And so we're not talking about adopting regulatory requirements. We're
11 not talking about coming up with things which normally would be subject to rulemaking.

12 And, again, guidance is often -- you know, internally there are discussions
13 until you get to the point where you think that guidance is ready to put out and to get
14 public input.

15 So, again, now the difference here is that we have two agencies involved.
16 And, again, having to strike the balance as to how you can get the input from NRC and
17 then get things ready for the public.

18 But, again, it's hard to know.

19 I think all of us agree that it's very important to have public involvement.
20 And certainly on issues which may be more generic in nature, it certainly probably will
21 be important to have meetings and to get public comments on that.

1 But that doesn't mean that when people are trying to actually get to the
2 point where they might sound coherent, unlike me, when they are talking, that they will
3 be able to put forth a position and then get some feedback on that.

4 MS. D'ARRIGO: So I would just submit the comment for my organization.

5 And I was also asked to convey it for the Sierra Club's Radiation
6 Committee -- I know there are others from the Sierra Club here -- but that we would ask
7 for openness in all of the information that's shared on these decisions.

8 And then on behalf of a coalition of organizations in Western New York,
9 New York State, and national groups, we would ask how the precedent that's being set
10 here might apply to the decisions on the West Valley heels and tanks there.

11 MR. CAMERON: And I guess I would have two comments.

12 Maybe Ben has really given us a good analogy in terms of how this
13 process might work where usually, if an agency is developing a particular position,
14 there's a point in time during the development when it's really not ready for prime time,
15 so to speak. It's not coherent enough. There's not enough agreement within the
16 agency yet to make that an issue for public comment yet.

17 And in this situation, under the Act, since there's a consultation role for the
18 NRC, it is when is the Department's decision informed by the NRC expertise through
19 consultation, when is that ready for a discussion, productive discussion with the public.

20 MR. MCRAE: And I think that will vary because the issues are different
21 and -- but truly, I think both agencies are -- recognize the importance of having that
22 comment and hopefully the buy in from the public, or at least an understanding of the

positions that they are taking so they can understand the decision making process, and have some confidence in it.

MR. CAMERON: And I think that leads to the second concern, Diane, about West Valley, is that this particular process, under 3116, is a unique process that we were given through legislation.

And in West Valley, and I'm going to let Larry expound on this, it's a different story; correct?

MR. CAMPER: Well, it is a different story.

I mean, West Valley is not at all subject to the 3116 provisions. At West Valley you have four tanks there on the north plateau that are undergoing remediation as part of the cleanup work the DOE is doing there. They're following 435.1.

It's markedly different, though, for a couple of reasons. One is in the Decommissioning Policy Statement for West Valley, the Commission specifically addressed the fact that there was waste incidental to reprocessing at West Valley, and we will be looking at that.

Now, what's also different at West Valley is that those tanks will be remediated and will be considered overall, eventually, as part of the decommissioning plan for that site. And at some point, we will review and approve the decommissioning plan for the West Valley site.

We have a regulatory role at West Valley to fulfill. It's different than this role here.

1 So there is similar -- similar types of waste, clean up methodologies are
2 similar in that they use 435.1, but the evaluation process and the ultimate regulatory
3 application of that evaluation is different.

4 And ultimately, we will evaluate the site in totality and determine if it's
5 suitable for release, unrestricted release, restricted release, or certain portions of the
6 site need to remain licensed in perpetuity.

7 So it's somewhat similar, yet markedly different.

8 MR. CAMERON: Okay, thank you.

9 Anybody else on this?

10 If you don't mind, in the audience, let me -- before the phones are cut off,
11 Ruth, you have another opportunity here, but you're going to have to be pretty crisp for
12 us because the phones are going to be cut off soon, and we do need to get back to the
13 audience.

14 So do you have a further comment or question?

15 MS. THOMAS: Well, I wanted to say that the NRC's questions that we
16 received and the visuals were very helpful in understanding the tanks and the removal.

17 And I am interested, too. I think one of the problems that we had -- and I
18 don't know if others did or not. We are not on an email list. We do not have computers
19 and -- or the office does not.

20 So we did not receive some of the information in time to take as active a
21 part as we would like to. And we have taken an active part more recently, and we do it
22 through the state.

1 And it's a lot for a small group to understand all of this. And we are trying,
2 and, you know, appreciate -- we do appreciate the times when the explanations are
3 clear and -- because to us, it's a very big change from the way the high-level wastes
4 have been handled and how they were planned to be handled in the past.

5 MR. CAMERON: Okay. Thanks, Ruth.

6 What I hear you saying is that we should make sure you get hard copy
7 notification of any requests for a comment.

8 And, Larry, do you want to add something?

9 MR. CAMPER: I just had a footnote I wanted to add to Diane's. I know
10 that Diane left, but I'm sure she will read the transcript.

11 MS. THOMAS: And I don't know whether you need more information from
12 me to get that.

13 MR. CAMERON: We will make sure that we follow up with you.

14 I think we know how to get in touch with Ruth. And we will take sure that
15 we touch base with you and get whatever we need to get you information on a timely
16 basis; okay?

17 MS. THOMAS: Okay. And I appreciate the opportunity for taking part
18 today.

19 MR. CAMERON: All right. And thank you, thank you, Ruth, for taking
20 part.

21 And, Larry, before you talk, let me just make sure that Shelly and Kathleen
22 and Bruce don't have anything quickly to add on what they have heard today.

23 Anything else from the phones?

1 MS. SHERRITT: This is Shelly. I don't have anything else. Thank you
2 very much.

3 MR. CAMERON: All right. Okay. And, Larry, you were going to add
4 something on what Diane said.

5 MR. CAMPER: Yeah. I just had a quick footnote, but, Diane, I'm sure, will
6 read the transcript.

7 The criteria that we will be using to evaluate the tanks at the West Valley
8 site are essentially the same. I mean, if you look at not requiring disposal on a high-
9 level waste repository, all of the highly radioactive radionuclides removed to the
10 maximum extent practical, and bringing to bear the performance objectives of Part 61,
11 they will all apply to West Valley, as well.

12 But the regulatory scheme is what is different.

13 MR. CAMERON: Okay. Others in the room, comment, questions?

14 All right. Any final words from the panel?

15 Okay. I would just like to thank everybody for being here and being on the
16 phone. I think we heard some useful information for us to think about.

17 Thank you.

18
19 (Whereupon, the public meeting was concluded at 11:28 a.m.)
20

1 CERTIFICATE OF REPORTER

2
3
4 I, Joseph A. Inabnet, do hereby certify that the transcript of the foregoing
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10 interested in the outcome of the action.

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15 Court Reporter



United States Nuclear Regulatory Commission

NRC NDAA Activities

Larry Camper, Director

Division of Waste Management
and Environmental Protection
U.S. Nuclear Regulatory Commission

November 16, 2006



United States Nuclear Regulatory Commission

Overview

- NRC involvement based on the National Defense Authorization Act for Fiscal Year 2005 (NDAA)
- The NDAA established the criteria to be used
- NRC performed an independent technical review
- NRC must, in coordination with the State, monitor DOE's disposal actions



United States Nuclear Regulatory Commission

National Defense Authorization Act (NDAA)

- The Act sets the criteria to be used in waste determinations, which are:
 - (1) The waste does not require disposal in a deep geologic repository
 - (2) The waste has had highly radioactive radionuclides removed to the maximum extent practical, and
 - (3A) If the waste is Class C or less, its disposal must meet 10 CFR 61 Subpart C, or
 - (3B) If the waste exceeds Class C, its disposal must meet 10 CFR 61 Subpart C and DOE must consult with NRC on development of its disposal plans



United States Nuclear Regulatory Commission

NRC Approach to NDAA Reviews

- Independent technical review regarding whether DOE's approach meets the NDAA criteria
- Similar to technical reviews prior to NDAA
- Detailed technical review is necessary for NRC to properly discharge its monitoring role
- Public meetings would be conducted in accordance with the requirements in MD 3.5



United States Nuclear Regulatory Commission

Lessons Learned Meeting

- Held between NRC, DOE, DHEC, and South Carolina Governor's Nuclear Advisory Council on April 10, 2006
- Discussed lessons learned from consultation for saltstone waste determination, which was the first review completed under the NDAA
- Determined three main areas for possible increased efficiency:
 - Agency-to-agency meetings
 - Earlier interactions
 - Resolution of generic technical issues



United States Nuclear Regulatory Commission

Generic Technical Issues

Priority	Topic
1	Point of compliance location Grouping tanks for submittal Submission of waste determination prior to waste removal Cumulative impacts
2	Concentration averaging
3	Basis/criteria for terminating waste removal activities
4	Model support Sensitivity and uncertainty analyses
5	Estimating waste inventory and waste tank characterization
6	Long-term grout performance
7	Long-term engineered cap performance 2

Key implementation issue is what **technical policy** approach/methodology to use for NDAA Section 3116 decisions (DOE) and monitoring (NRC)

Atomic Energy Act of 1954

Protect public from exposure to radiation from radioactive materials

